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SENATE BILL 549

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Manny M. Aragon

FOR THE WELFARE REFORM OVERSIGHT COMMITTEE

AN ACT

RELATING TO DOMESTIC VIOLENCE; INCREASING PENALTIES FOR
OFFENSES AGAINST HOUSEHOLD MEMBERS; IMPOSING AN INCREASED
PENALTY FOR VIOLATION OF AN ORDER OF PROTECTION; PROVIDING FOR
A FORTY-EIGHT-HOUR HOLD ON OFFENDERS WHO COMMIT AN OFFENSE
PURSUANT TO THE CRIMES AGAINST HOUSEHOLD MEMBERS ACT OR THE
FAMILY VIOLENCE PROTECTION ACT; AMENDING AND ENACTING SECTIONS
OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-3-12 NMSA 1978 (being Laws 1995,
Chapter 221, Section 3) is amended to read:

"30-3-12. ASSAULT AGAINST A HOUSEHOLD MEMBER.--

A. Assault against a household member consists of:

(1) an attempt to commit a battery against a
household member; or

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1 (2) any unlawful act, threat or menacing
2 conduct that causes a household member to reasonably believe
3 that he is in danger of receiving an immediate battery.

4 B. Whoever commits assault against a household
5 member is ~~[guilty of a petty misdemeanor]~~:

6 (1) upon a first conviction, guilty of a petty
7 misdemeanor and the offender shall be sentenced pursuant to
8 Section 31-19-1 NMSA 1978;

9 (2) upon a second conviction, guilty of a
10 misdemeanor and the offender shall be sentenced to a jail term
11 of not less than seventy-two consecutive hours that shall not
12 be suspended, deferred or taken under advisement; and

13 (3) upon a third or subsequent conviction,
14 guilty of a misdemeanor and the offender shall be sentenced to
15 a jail term of not less than one month that shall not be
16 suspended, deferred or taken under advisement."

17 Section 2. Section 30-3-13 NMSA 1978 (being Laws 1995,
18 Chapter 221, Section 4) is amended to read:

19 "30-3-13. AGGRAVATED ASSAULT AGAINST A HOUSEHOLD
20 MEMBER.--

21 A. Aggravated assault against a household member
22 consists of:

23 (1) unlawfully assaulting or striking at a
24 household member with a deadly weapon; or

25 (2) willfully and intentionally assaulting a

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1 household member with intent to commit any felony.

2 B. Whoever commits aggravated assault against a
3 household member is [~~guilty of a fourth degree felony~~]:

4 (1) upon a first conviction, guilty of a
5 fourth degree felony and the offender shall be sentenced to a
6 term of incarceration of eighteen months with not less than six
7 months of the term of incarceration that shall not be
8 suspended, deferred or taken under advisement;

9 (2) upon a second conviction, guilty of a
10 fourth degree felony and the offender shall be sentenced to a
11 term of incarceration of eighteen months with not less than one
12 year of the term of incarceration that shall not be suspended,
13 deferred or taken under advisement; and

14 (3) upon a third or subsequent conviction,
15 guilty of a fourth degree felony and the offender shall be
16 sentenced to a term of incarceration of not less than eighteen
17 months that shall not be suspended, deferred or taken under
18 advisement."

19 Section 3. Section 30-3-14 NMSA 1978 (being Laws 1995,
20 Chapter 221, Section 5) is amended to read:

21 "30-3-14. ASSAULT AGAINST A HOUSEHOLD MEMBER WITH INTENT
22 TO COMMIT A VIOLENT FELONY.--

23 A. Assault against a household member with intent
24 to commit a violent felony consists of any person assaulting a
25 household member with intent to kill or commit any murder,

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1 mayhem, criminal sexual penetration in the first, second or
2 third degree, robbery, kidnapping, false imprisonment or
3 burglary.

4 B. Whoever commits assault against a household
5 member with intent to commit a violent felony is ~~[guilty of a~~
6 ~~third degree felony]~~:

7 (1) upon a first conviction, guilty of a third
8 degree felony and the offender shall be sentenced to a term of
9 three years of incarceration with not less than one year of the
10 term of incarceration that shall not be suspended, deferred or
11 taken under advisement;

12 (2) upon a second conviction, guilty of a
13 third degree felony and the offender shall be sentenced to
14 three years of incarceration with not less than two years of
15 the term of incarceration that shall not be suspended, deferred
16 or taken under advisement; and

17 (3) upon a third or subsequent conviction,
18 guilty of a third degree felony and the offender shall be
19 sentenced to three years of incarceration that shall not be
20 suspended, deferred or taken under advisement."

21 Section 4. Section 30-3-15 NMSA 1978 (being Laws 1995,
22 Chapter 221, Section 6, as amended) is amended to read:

23 "30-3-15. BATTERY AGAINST A HOUSEHOLD MEMBER.--

24 A. Battery against a household member consists of
25 the unlawful, intentional touching or application of force to

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1 the person of a household member, when done in a rude, insolent
2 or angry manner.

3 B. Whoever commits battery against a household
4 member is [~~guilty of a misdemeanor~~]:

5 (1) upon a first conviction, guilty of a
6 misdemeanor and the offender shall be sentenced to a jail term
7 of not less than seventy-two consecutive hours that shall not
8 be suspended, deferred or taken under advisement;

9 (2) upon a second conviction, guilty of a
10 misdemeanor and the offender shall be sentenced to a jail term
11 of not less than thirty consecutive days that shall not be
12 suspended, deferred or taken under advisement; and

13 (3) upon a third or subsequent conviction,
14 guilty of a fourth degree felony and the offender shall be
15 sentenced to a term of incarceration of not less than six
16 months that shall not be suspended, deferred or taken under
17 advisement."

18 Section 5. Section 30-3-16 NMSA 1978 (being Laws 1995,
19 Chapter 221, Section 7) is amended to read:

20 "30-3-16. AGGRAVATED BATTERY AGAINST A HOUSEHOLD
21 MEMBER.--

22 A. Aggravated battery against a household member
23 consists of the unlawful touching or application of force to
24 the person of a household member with intent to injure that
25 person or another.

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1 B. Whoever commits aggravated battery against a
2 household member by inflicting an injury to that person that is
3 not likely to cause death or great bodily harm, but that does
4 cause painful temporary disfigurement or temporary loss or
5 impairment of the functions of any member or organ of the body,
6 is ~~[guilty of a misdemeanor]~~:

7 (1) upon a first conviction, guilty of a
8 misdemeanor and the offender shall be sentenced to a jail term
9 of not less than ninety consecutive days that shall not be
10 suspended, deferred or taken under advisement;

11 (2) upon a second conviction, guilty of a
12 fourth degree felony and shall be sentenced to a term of
13 incarceration of not less than one year that shall not be
14 suspended, deferred or taken under advisement; and

15 (3) upon a third or subsequent conviction,
16 guilty of a fourth degree felony and shall be sentenced to a
17 term of incarceration of not less than eighteen months that
18 shall not be suspended, deferred or taken under advisement.

19 C. Whoever commits aggravated battery against a
20 household member by inflicting great bodily harm or doing so
21 with a deadly weapon or doing so in any manner whereby great
22 bodily harm or death can be inflicted is guilty of a third
23 degree felony and upon conviction shall be sentenced to a term
24 of incarceration of not less than three years that shall not be
25 suspended, deferred or taken under advisement."

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1 Section 6. A new section of the Crimes Against Household
2 Members Act is enacted to read:

3 "[NEW MATERIAL] COUNSELING.--In addition to any other
4 penalty provided in the Crimes Against Household Members Act,
5 the court shall order a person convicted for the first time for
6 violation of a criminal offense pursuant to the Crimes Against
7 Household Members Act to participate in and complete a program
8 of professional counseling at the person's own expense."

9 Section 7. A new section of the Crimes Against Household
10 Members Act is enacted to read:

11 "[NEW MATERIAL] FORTY-EIGHT-HOUR HOLD FOLLOWING ARREST.--
12 Following an arrest for an offense pursuant to the Crimes
13 Against Household Members Act, the offender shall be held for a
14 period of not less than forty-eight hours following the
15 offender's arrest. The offender shall be given a bail hearing,
16 in accordance with the provisions of Article 2, Section 13 of
17 the constitution of New Mexico and shall be eligible for bail
18 following the forty-eight-hour hold period."

19 Section 8. Section 40-13-6 NMSA 1978 (being Laws 1987,
20 Chapter 286, Section 6, as amended) is amended to read:

21 "40-13-6. SERVICE OF ORDER--DURATION--PENALTY--REMEDIES
22 NOT EXCLUSIVE.--

23 A. An order of protection granted under the Family
24 Violence Protection Act shall be filed with the clerk of the
25 court, and a copy shall be sent by the clerk to the local law

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1 enforcement agency. The order shall be personally served upon
2 the respondent, unless [~~he~~] the respondent or [~~his~~] the
3 respondent's attorney was present at the time the order was
4 issued. The order shall be filed and served without cost to
5 the petitioner.

6 B. An order of protection granted by the court
7 involving custody or support shall be effective for a fixed
8 period of time not to exceed six months. The order may be
9 extended for good cause upon motion of the petitioner for an
10 additional period of time not to exceed six months. Injunctive
11 orders shall continue until modified or rescinded upon motion
12 by either party or until the court approves a subsequent
13 consent agreement entered into by the petitioner and the
14 respondent.

15 C. A peace officer shall arrest without a warrant
16 and take into custody a person whom the peace officer has
17 probable cause to believe has violated an order pursuant to
18 this section.

19 D. State courts shall give full faith and credit to
20 tribal court orders of protection and orders of protection
21 issued by courts of other states. A protection order issued by
22 a state or tribal court against one who has petitioned, filed a
23 complaint or otherwise filed a written pleading for protection
24 against abuse by a spouse or intimate partner is not entitled
25 to full faith and credit if:

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1 (1) no cross or counter petition, complaint or
2 other written pleading was filed seeking such a protection
3 order; or

4 (2) a cross or counter petition has been filed
5 and the court did not make specific findings that each party
6 was entitled to such an order.

7 E. A person convicted of violating an order of
8 protection granted by a court under the Family Violence
9 Protection Act is guilty of a misdemeanor and shall be
10 sentenced in accordance with Section 31-19-1 NMSA 1978. Upon a
11 [~~second or subsequent~~]:

12 (1) first conviction, an offender shall be
13 sentenced to a jail term of not less than seventy-two
14 consecutive hours that shall not be suspended, deferred or
15 taken under advisement;

16 (2) second conviction, the offender shall be
17 sentenced to a jail term of not less than thirty consecutive
18 days that shall not be suspended, deferred or taken under
19 advisement; and

20 (3) third conviction, the offender shall be
21 sentenced to a jail term of not less than sixty consecutive
22 days that shall not be suspended, deferred or taken under
23 advisement.

24 F. In addition to any other [~~punishment~~] penalty
25 provided in the Family Violence Protection Act, the court shall

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1 order a person convicted to make full restitution to the party
2 injured by the violation of an order of protection and order
3 the person convicted to participate in and complete a program
4 of professional counseling, at ~~[his]~~ the person's own expense,
5 if possible.

6 G. In addition to charging the person with
7 violating an order of protection, a peace officer shall file
8 all other possible criminal charges arising from an incident of
9 domestic abuse when probable cause exists.

10 H. The remedies provided in the Family Violence
11 Protection Act are in addition to any other civil or criminal
12 remedy available to the petitioner."

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